
(1979) 11 AHC CK 0092
In the Allahabad High Court
Case No : Criminal Rev. No. 1080 of 1978

Prakash Chandra Sharma

APPELLANT

Vs

Kaushal Kishore

RESPONDENT

Date of Decision : 14-11-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 468, 468(2), 469, 473
Penal Code, 1860 (IPC) — Section 182

Citation : (1980) ACR 179

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : G.P. Mathur, for the Appellant; A.K. Yog, for the Respondent

Final Decision : Allowed

Judgement

P.N. Bakshi, J.—It appears that proceedings under Sec 145 Code of Criminal Procedure were pending between Prakash Chandra Sharma and Sabuddin. On 20th December, 75, Prakash Chandra filed an application informing the Municipal Board that these proceedings were over, and the rasta in dispute had been released. This information was supplied for the purpose of obtaining sanction with respect to which an earlier application was already pending before the Municipal Board. On the same day, viz. 20th December, 75, the Municipal Board sanctioned the plan submitted by Prakash Chandra. It appears that on 11th November, 76, Sabuddin filed an application and affidavit before the officer-in-charge of the Municipal Board that the information which was conveyed by Prakash Chandra regarding the termination of proceeding u/s 145 Code of Criminal Procedure was false and that the same were still pending. On 6th May, 1977, a complaint was filed by the Officer-in-charge of the Municipal Board Bulandshahr. The accused was summoned for 2nd June, 77. He appeared and filed an objection u/s 468(b) Code of Criminal Procedure on the ground that the period of limitation had already expired and the court could not take cognizance of the complaint. On 7th February, 78, the Asstt. District Government Counsel

filed an application that the officer-in-charge Municipal Board obtained knowledge of the false information given by Prakash Chandra on 11th November, 76, when Sabuddin filed his application and affidavit before him. If the period of limitation is computed from the date of knowledge, the complaint would be well within 1 year of such date and the delay in filing the complaint should, therefore, be condoned. The Magistrate on a consideration of all the facts and circumstances of the case, dismissed the complaint and discharged the accused on the ground that it has been filed after the expiry of the period of limitation. Aggrieved thereby a revision was filed before the Sessions Judge, Bulandshahr which has been allowed on 2nd June, 78 ; hence this revision.

2. I have heard learned Counsel for the parties and have also perused the impugned orders.

3. The question of law which has to be determined in the instant case is whether it is incumbent upon a party to file an application for condonation of the delay along with a time barred complaint, so that he can get the benefit of Section 473 Code of Criminal Procedure. Section 468 of the New Code of Criminal Procedure 1973 has now specified the period of limitation within which a court can take cognizance of various offences mentioned therein. It bars the taking of cognizance after the expiry of the period of limitation.

Section 468:-(1) Except as otherwise provided elsewhere in this code, no court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be--

(a) six months, if the offence is punishable with fine only ;

(b) one year, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years ;

(c) three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

4. In the instant case the offence u/s 182 IPC is punishable with imprisonment which may extend to 6 months, therefore, Section 468(2)(b) would be applicable. u/s 469 Code of Criminal Procedure the period of limitation in relation to an offender commences:

(a) on the date of the offence ; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is

earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded:

5. A perusal of Section 469 Code of Criminal Procedure quoted above clearly indicates that the period of limitation commences either on the date of the offence ; or when the commission of the offence was not known to the person from the date when he first got knowledge of it. We are here not concerned with Clause (c) of Section 469 Code of Criminal Procedure.

6. The next section to be taken into consideration is 473 Code of Criminal Procedure, which is quoted as under:-

Section 473:-Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

These are the relevant provisions of the Code of Criminal Procedure with regard to the question in hand.

7. It is not disputed that the offence in question if at all has been committed on 20th December, 75, when the incorrect information was given by Prakash Chandra to the Municipal Board. Therefore, the date of the offence for which he was sought to be prosecuted u/s 182 IPC, would be 20th December, 75. It is significant to note that the case set up by Asstt. District Government counsel that the officer incharge Municipal Board had no knowledge of the offence in question till 11th November, 76, does not find place at all in the complaint, which had been (sic) by the officer-in-charge on 6th May, 77. No affidavit either was filed before the Magistrate by the officer-in-charge to support the assertion that he had no knowledge prior to 11th November, 76. A mere application by the A. D. G. C. is not sufficient to hold that the officer-in-charge did not have any knowledge of the offence earlier than 11th November, 76. As such Section 469(b) Code of Criminal Procedure will not be applicable to the instant case.

8. Section 468 Code of Criminal Procedure bars the taking of cognizance by a court with respect to an offence for which the complaint is filed after the expiry of the period of limitation. The bar of limitation is an absolute bar. It goes to the root of the jurisdiction of the court. It provided amnesty to the accused from prosecution, which he would otherwise be faced, with, if the limitation had not been prescribed. He has a right not to be prosecuted for the alleged offence, when the period for such prosecution has elapsed in accordance with law. Therefore, when a complaint is filed against the accused, which prima facie is barred by time, it becomes necessary for the prosecuting agency to simultaneously file an application for condonation of the delay u/s 473 Code of Criminal Procedure. Unless the delay is condoned, the court can not take

cognizance of the complaint. In the instant case admittedly the complaint was balated by years. The offence was alleged to have been committed on 20th December, 75, while the complaint was filed on 6th May, 1977. The officer-incharge Municipal Board Bulandshahr--with its Law Section to assist him--must be aware that such a balated complaint could not, in law, be filed and its cognizance could not be taken by the court, therefore, as a reasonable and cautious litigant, it was necessary for him to have filed the application for condonation of delay along with the complaint supported by an affidavit explaining the delay. In the absence of such an application, the Magistrate had no other alternative but to dismiss the complaint as time barred. The Magistrate could not, in law, proceed with the complaint and summon the accused. The question of explaining the delay at a subsequent stage could not, therefore, arise for, at the initial stage itself the complaint had to be dismissed by the Magistrate in accordance with Section 468 Code of Criminal Procedure. I am not inclined to agree with the submission made on behalf of the Respondent's counsel that cognizance could be taken of a prima facie time barred complaint by a Magistrate, who could proceed with the case, summon the accused and even record the evidence and thereafter consider the question whether cognizance should at all be taken and the delay condoned. The initial question for determination before proceeding with a time barred complaint is the question of limitation. The new provision has been enacted for the purpose of preventing a vexatious and frivolous prosecution of the accused leading to an unnecessary harassment of the citizen. It must be strictly construed, so that the intention of the law is achieved.

9. I am supported in my view by a decision of late Mr. Justice R.K. Tankha of the Madhya Pradesh High Court in Krishna Sanghi and Others Vs. The State of Madhya Pradesh, , who had made the following observations in this connection:

Whenever a compliant or a chalan is filed at the instance of any person or any police officer, the Court must first see that Section 468 is attracted or not. If it does, it should not register the case but give an opportunity to the person or the police officer filing the complaint or chalan to satisfy it on the point of limitation for purposes of condonation of delay. As regards the condonation of delay it should not be done as a matter of course. The delay has to be condoned with exercise of judicial discretion.

10. A similar view has been expressed by Andhra Pradesh High Court in Bharat Hybrid Seeds and Agro Enterprises and Another Vs. The State, as under:-

It must be noted that once the period of limitation prescribed under the Code or any other law for launching a prosecution has expired, certain rights would accrue to the accused to the effect that there would be no prosecution thereafter....

Although as held in Cushrow Russy Irani Vs. The State and Another, reasons for the extension of time can be given by the Court even in a later stage when the

accused enter their appearance and object to the prosecution having been barred by limitation, it is only desirable but also essential in the interests of justice that even before cognizance of the offence is taken by the court after the period of limitation, it should be given notice and opportunity to the proposed accused and satisfy itself as to the adequacy of the reason for the delay. This rule of practice should always be followed by courts.

11. On the merits also, I do not find sufficient justification for interference with the order of the Magistrate. The only grievance of the prosecution appears to be that a plan has been sanctioned in favour of Prakash Chandra by the officer-in-charge Municipal Board on the mis-representation of facts. There is ample provision under the Municipalities Act for cancellation of a sanctioned plan which has been obtained by fraud or mis-representation. There is also ample provision under the said Act for the institution of a suit for the removal of construction if any which may have been made in pursuance of the erroneous sanctioned plan. Thus, there is sufficient remedy open to the Municipal Board Bulandshahr to vindicate its rights in the civil court which will provide an adequate solution to the grievances of the Municipal Board.

12. This revision application is accordingly, allowed. The order of the Sessions Judge Bulandshahr dated 2nd June, 78 is set aside and that of the trial court restored.